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Department of Defense
DIRECTIVE

AD-A271 758



December 2, 1992

NUMBER 5240.12

ASD(C3I)

SUBJECT: Department of Defense (DoD) Intelligence Commercial Activities (ICAs)

- References:
- (a) Sections 431 through 437 of Title 10 of the United States Code
 - (b) Executive Order 12333, "United States Intelligence Activities," December 4, 1981
 - (c) DoD Directive 5240.1, "DoD Intelligence Activities," April 25, 1988

A. PURPOSE

This Directive:

- 1. Implements reference (a) in furtherance of the accomplishment of DoD intelligence responsibilities authorized under references (b) and (c).
- 2. Establishes policy, assigns responsibilities, and prescribes procedures for establishment and use of DoD ICAs necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Defense Agencies; and DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. DEFINITIONS

For the purposes of this Directive, the following terms have the meanings set forth:

- 1. Intelligence Collection Activities. Collection of foreign intelligence and counterintelligence information.
- 2. DoD Intelligence Commercial Activities. Activities that are conducted in a manner consistent with prevailing commercial practices and including--
 - a. The acquisition, use, sale, storage and disposal of goods and services;
 - b. Entering into employment contracts and leases and other agreements for real and personal property;
 - c. Depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;
 - d. Acquiring licenses, registration, permits, and insurance; and

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e. Establishing corporation, partnerships, and other legal entities.

3. Sensitive DoD Intelligence Commercial Activity. A DoD intelligence commercial activity that is any of the following:

a. An activity involving matters of the type described in section D.1.f. of DoD Directive S-5105.29.

b. The initial occurrence of DoD intelligence commercial activity in a foreign country that is the intelligence collection target of the activity.

c. An activity that involves a financial transaction or a number of personnel that in size is substantial, the judgment of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

d. An activity the exposure of which, in the judgment of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, could reasonably be expected to have a substantial impact on U.S. foreign relations or military capabilities.

4. DoD Intelligence Commercial Activities Entity. An entity established by the Department of Defense in accordance with this Directive to conduct DoD intelligence commercial activities.

5. United States Person. An individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

D. POLICY

It is DoD policy that:

1. DoD ICAs shall not be conducted unless necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense.

2. DoD ICAs shall be coordinated with and where appropriate be supported by the Director of Central Intelligence.

3. DoD ICAs that take place within the United States shall be coordinated with and where appropriate be supported by the Director of the Federal Bureau of Investigation.

4. Funds generated by a DoD ICA entity may be used to offset necessary and reasonable expenses arising from the DoD ICAs of that entity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the DoD ICAs of that entity in a secure manner. Any funds generated by the DoD ICA entity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the the Treasury as miscellaneous receipts.

5. Personnel conducting DoD ICAs may only engage in DoD ICAs in the United States to the extent necessary to support intelligence activities abroad.

6. DoD ICAs may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as many be necessary to provide security for DoD ICAs.

7. A DoD ICA entity shall not employ a United States person in an operational, managerial, or supervisory position, and no United States person shall be assigned or detailed to perform operational, managerial, or supervisory duties for such entity, unless the person is informed in advance of the intelligence security purpose of the DoD ICA entity.

8. No element of the Department of Defense may engage in DoD ICAs, except the following elements when authorized pursuant to applicable law and this Directive:

- a. The intelligence elements of the Department of the Army.
- b. The intelligence elements of the Department of Navy.
- c. The intelligence elements of the Department of the Air Force.
- d. The Defense Intelligence Agency.
- e. The National Security Agency.
- f. The intelligence elements of the unified commands.

E. AUTHORITIES AND RESPONSIBILITIES

1. The Secretary of Defense or the Deputy Secretary of Defense may approve the establishment of a DoD ICA entity in accordance with Sections 431 through 437 of Title 10 of the United States Code (reference (a)). No DoD ICA entity shall be established without the approval of the Secretary of Defense or the Deputy Secretary of Defense. No sensitive DoD ICA shall be conducted without the approval of the Secretary of Defense or the Deputy Secretary of Defense.

2. The Assistant Secretary of Defense for Command, Control, Communications and Intelligence shall:

a. Establish and ensure compliance with policies consistent with applicable law and this Directive for the establishment, operation and termination of DoD ICA entities and the conduct of DoD ICAs.

b. Review all proposals for establishment of DoD ICA entities, obtain review of such proposals by the Under Secretary of Defense for Policy and the General Counsel of the Department of Defense, and, as appropriate, forward such proposals to the Deputy Secretary of Defense or the Secretary of Defense for approval.

c. Review all proposals for sensitive DOD ICAs, obtain review of such proposals by the Under Secretary of Defense for Policy and the General Counsel of the Department of Defense, and, as appropriate, forward such proposals to the Deputy Secretary of Defense or the Secretary of Defense for approval.

d. Require submission for the approval of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence of operational proposals

for DOD ICAs and significant changes to approved operational proposals to the extent the Assistant Secretary deems necessary to implement this Directive effectively;

e. Ensure that DoD ICAs comply with applicable laws, Executive Orders, and DoD Directives.

f. Perform the statutory duties of the Secretary of Defense with respect to:

(1) submitting regulations and revisions of regulations to the intelligence committees of the Congress pursuant to Section 437(a) of Title 10 of the United States Code.

(2) informing intelligence committees and appropriate committees of Congress pursuant to Section 437(b) of Title 10 of the United States Code.

(3) submitting to appropriate committees of Congress the annual report on DOD ICAs required by Section 437(c) of Title 10 of the United States Code.

(4) reporting the results of audits to the intelligence committees of the Congress as required by Section 432(b)(2) of Title 10 of the United States Code.

g. Establish within the Defense Intelligence Agency a single office which is hereby designated to be responsible for the management and supervision of all DOD ICAs.

h. Is hereby delegated the authority of the Secretary of Defense to waive compliance with certain laws or regulations under Section 433 of Title 10 of the United States Code, which may not be redelegated and the exercise of which shall be coordinated with the General Counsel of the Department of Defense.

i. Ensure that appropriate legal review of a DOD ICA occurs before that ICA is authorized.

j. Ensure that appropriate internal audit controls and oversight exist for each DOD ICA entity.

3. The General Counsel of the Department of Defense shall:

a. Review all proposals for establishment of DOD ICA entities prior to their submission to the Deputy Secretary of Defense or the Secretary of Defense for approval.

b. Review all proposals to waive compliance with laws or regulations under Section 433 of Title 10 of the United States Code prior to the granting of waivers.

c. Review all proposals for sensitive DOD ICAs prior to their submission to the Deputy Secretary of Defense or the Secretary of Defense for approval.

d. Provide advice and assistance on legal matters relating to DOD ICAs.

4. The Assistant to the Secretary of Defense for Intelligence Oversight shall:

a. Review DoD ICAs as a part of the Assistant to the Secretary's intelligence oversight responsibility to the Secretary of Defense pursuant to applicable DoD directives.

b. Have auditing responsibilities, to be implemented in accordance with applicable audit standards, for DOD ICAs; in addition to conducting such other audits as the Assistant to the Secretary may deem appropriate, the Assistant to the Secretary shall audit not less often than annually the use and disposition of funds generated by DOD ICAs and report the results of the audit to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence for any needed corrective action and for reporting under Section E.2.f.iv.

c. Obtain from the Heads of DOD Components such personnel, other resources and support as may be necessary to carry out the Assistant to the Secretary's duties, including audit duties.

5. The Secretaries of the Military Departments and the Heads of Other DOD Components shall:

a. Submit to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence requirements for DOD ICA support.

b. Ensure compliance by components under their jurisdiction with policies established and instructions issued by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence pursuant to this Directive.

c. Provide personnel, other resources and support to the Assistant to the Secretary of Defense for Intelligence Oversight as needed for the Assistant to the Secretary to perform the duties set forth in Section E.4.

6. The Secretaries of the Military Departments, the Director of the National Security Agency, the Director of the Defense Intelligence Agency and the commanders of the unified commands shall ensure compliance with applicable laws and this Directive in the establishment, operation, and termination of DOD ICA entities and the conduct of DOD ICAs.

7. The Under Secretary of Defense for Policy shall:

a. Review all proposals for establishment of DoD ICA entities prior to their submission to the Deputy Secretary of Defense or the Secretary of Defense for approval.

b. Review all proposals for sensitive DoD ICSs prior to their submission to the Deputy Secretary of Defense or the Secretary of Defense for approval.

F. IMPLEMENTATION AND EFFECTIVE DATES

1. The Assistant Secretary of Defense for Command, Control, Communications and Intelligence may issue such instructions as may be necessary to implement this Directive. Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. Instructions to the Unified and Specified Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

2. Nothing in this Directive authorizes the conduct of any intelligence activity that is not otherwise authorized by law or Executive order.

3. This Directive is effective immediately. This Directive was submitted to the intelligence committees of the Congress not less than 30 days prior to the date of the signature, as required by Section 437 of Title 10 of the United States Code.

4. No DOD ICA shall be initiated pursuant to this Directive after December 31, 1995.



Deputy Secretary of Defense

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SUPPLEMENTARY

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ATTACHMENTS

None

INSTRUCTIONS FOR RECIPIENTS

The following pen change to DoD Directive 5240.12, "Department of Defense (DoD) Intelligence Commercial Activities (ICAs)," December 2, 1992, is authorized:

PEN CHANGE


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Subsection F.4., line 2. Change "1995" to "1998"

Public Law 104-93 amended Title 10, United States Code §431(a) by striking "1995" and inserting "1998." This pen change to the DoD Directive implements the change in Public Law 104-93 thus permitting DoD Intelligence Commercial Activities pursuant to DoD Directive 5240.12 until December 31, 1998.

EFFECTIVE DATE

The above change is effective immediately.


LARRY E. CURRY
Director
Correspondence and Directives

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